

REMARKS

Claims 1 to 30 remain pending. Claim 31 has been added.

Claim 15 has been objected to as being dependent on claim 1, a non-elected claim.

The objection to claim 15 is overcome in view of the amendments to same removing the dependency and incorporating certain subject matter of claim 1 into claim 15.

Claims 12, 13, 15, and 16 have been rejected under 35 U.S.C. 112, first paragraph, as being non-enabling for prevention of wrinkles.

The rejection of claims 12 and 13 under 35 U.S.C. 112, first paragraph, is overcome in view of the amendments deleting reference to prevention of lines and wrinkles and in claims 15 and 16. The rejection of claims 15 and 16 is overcome in view of the deletion of reference to lines and wrinkles in claim 16. New claim 31 relates to treatment of lines and wrinkles.

Claims 11 to 13 have been rejected under 35 U.S.C. 112, second paragraph, as being indefinite. The Action stated that claim 11 does not have a transitional phrase for the composition itself.

The rejection of claims 11 to 13 under 35 U.S.C. 112, second paragraph, is overcome in view of the amendment to claim 11.

Claims 11 to 13, 15, and 16 have been rejected under 35 U.S.C. 103(a) as being unpatentable over JP 06-100412 (JP '412), JP 61-271210 (JP '210), U.S. 5,972,341 (U.S. '341), and U.S.

5,968,423 (U.S. '423). The Action stated that JP '412 discloses a cosmetic having neem seed that increased skin tone. The Action stated that JP '210 discloses that Salvia miltiorrhiza increases skin tone. The Action stated that it is prima facie obvious to combine the teachings of JP '412 and JP '210. The Action stated that U.S. '341 discloses that cosmetic compositions that increase skin tone reduce the depth of line and wrinkles and make them less obvious. The Action stated that the skilled artisan would expect that a skin toning composition having neem seed extract and S. miltiorrhiza extract would be useful in reducing the appearance of lines and wrinkles. The Action stated that, taken together, JP '412, JP '210, and U.S. '341, disclose using neem seed extract and S. miltiorrhiza extract to reduce the appearance of lines and wrinkles. The Action admits that the references do not disclose neem seed broth. The Action stated that U.S. '423 discloses using cell cultures of neem seed to culture active substances from the neem seed. The Action stated that U.S. '423 discloses that cell culture is advantageous because it increases availability of neem seed products and reduces potential contaminants. That Action stated that in view of the advantageous result from neem seed cell cultures, the skilled artisan would have been motivated to use cell culture to create the neem seed extract.

The rejection of claims 11 to 13, 15, and 16 under 35 U.S.C. 103(a) as being unpatentable over JP '412, JP '210, U.S. '341, and U.S. '423 is not well taken. Independent claim 11 requires that a composition have a blend of a neem seed cell broth and one or more botanical ingredients selected from a group. JP '412 discloses neem seed but does not disclose neem seed cell broth.

The instant specification at page 11 (bottom) and page 12 (top) describes neem seed cell broth as prepared by tissue

culture of cells isolated from neem seed. Neem seed cells are cultivated in tissue culture medium containing appropriate nutrients and ingredients. This provides for rapid cell growth and production of key active components from the neem seed cell broth.

On the contrary, JP '412 discloses in the Abstract and at paragraphs 27 and 28 that seed of *Azadirachta indica* (neem seed) can be extracted with a solvent, such as methanol, and freeze-dried. These extracts are materially different than the neem seed cell broth required by the claimed invention. The only active components that can potentially be obtained from the disclosure of JP '412 are those that were already present in neem seed. Further, the active components obtained from the extracts of JP'412 are limited, i.e., are dependent on choice of solvent, time length of extraction, and temperature of extraction. On the other hand, the neem seed cell broth of the claimed invention provides for controlled growth of an array of active components at concentrations greater than available from the seed alone.

Claims 11 to 13, 15, and 16 have been provisionally rejected under the judicially created doctrine of obviousness double patenting as being unpatentable over claims 13 to 18 of copending U.S. Serial No. 10/040,242 (Appl. '242) or claims 13 to 18 of U.S. Serial No. 10/845,603 (Appl. '603) in view of CN 109752. The Action stated that Appl. '242 and Appl. '603 disclose using neem seed cell to reduce wrinkles. The Action admitted that the applications do not disclose using *S. miltiorrhiza*. The Action stated that CN '752 discloses using *S. miltiorrhiza* to treat wrinkles. The Action stated that it was prima facie obvious to combine the ingredients.

The provisional rejection of claims 11 to 13, 15, and 16 under the judicially created doctrine of obviousness double patenting as being unpatentable over claims 13 to 18 of copending Appl. '242 or claims 13 to 18 of Appl. '603 in view of CN 109752 is overcome or is not well taken.

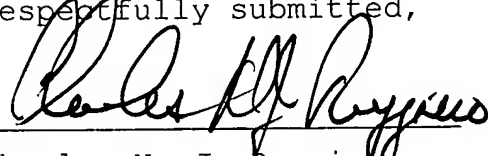
The provisional rejection of claims 11 to 13, 15, and 16 under the judicially created doctrine of obviousness double patenting as being unpatentable over claims 13 to 18 of copending Appl. '242 in view of CN 109752 is overcome in view of the terminal disclaimer submitted herewith.

The provisional rejection of claims 11 to 13, 15, and 16 under the judicially created doctrine of obviousness double patenting as being unpatentable over claims 13 to 18 of copending Appl. '603 in view of CN 109752 cannot be addressed as Applicants do not have access to the current text of claims 13 to 18 of Appl. '603. Appl. '603 was filed by another attorney not of record in the present application. A petition to inspect the file of copending Appl. '603 has been submitted on behalf of Inventor Duggan, but no decision has been received from the USPTO regarding that petition. Further, as permitted in view of MPEP 804(I)(B), address of a provisional rejection under the judicially created doctrine of obviousness double patenting can be deferred.

Reconsideration of claims 1 to 30 is deemed warranted in view of the foregoing, and allowance of said claims and new claim 31 is earnestly solicited.

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Respectfully submitted,



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